IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 25434 of 2007(C)

PETITIONER:

P. SUKUMARA PANIKKER
14/304,POURNAMI,
THORAPALAYAM,PALAKKAD-1.

BY ADV. SRI.T.R.RAJAN

RESPONDENTS:

1. THE AROOKUTTY GRAMA ANCHAYAT
REPRESENTED BY ITS SECRETARY,AROOKUTTY.

2. THE PANCHAYAT COMMITTEE,
AROOKUTTY GRAMA PANCHAYAT REPRESENTED BY ITS
PRESIDENT, AROOKUTTY.

3. THE SECRETARY,
AROOKUTTY GRAMA PANCHAYAT,AROOKUTTY.

4. LALITHA RAGHAVAN NAIR, CHANDRAVILASOM,
WARD NO XI,AROOKUTTY.

R4 BY ADV. SRI.A.BALAGOPALAN
SMT.KALA G.NAMBIAR
R1 TO R3 BY ADV. SRI.R.MURALEEKRISHNAN
SRI.P.RAVINDRA NATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE NOTICE BEARING NO.A5-3/07 DATED 16.07.07 ISSUED BY THE PRESIDENT, AROOKUTTY GRAMA PANCHAYAT TO SUNIL KUMAR, PUTHENPURAYIL.

EXT.P2 : TRUE COPY OF THE ORDER BEARING NO.A6, 173/01-08 DATED 13.08.07 ISSUED BY THE SECRETARY, AROOKUTTY GRAMA PANCHAYAT TO SUNIL KUMAR, PUTHENPURAYIL.

EXT.P3 : TRUE COPY OF THE PHOTOGRAPHS NUMBERING 5 OF THE ANJALI TREE.

EXT.P4 : TRUE COPY OF THE PETITION DATED 19.08.07 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 25434 OF 2007

Dated this the 17th day of September, 2007

JUDGMENT

Ext.P2 order of the Secretary of the Panchayat issued under Section 238 of the Panchayat Raj Act directing the petitioner to cut and remove the branches of a tree which hangs over to the 4th respondent's property is under challenge.

2. I have heard the submissions of Mr.T.R. Rajan, counsel for the petitioner. I have also heard counsel for the 4th respondent,Sri.A. Balagopalan and Sri.R. Muraleekrishnan, Standing Counsel for the Panchayat. Drawing my attention to the judgment of this Court in **Thankamma v. Ezhumattur Grama Panchayat** [2001(2) KLT 596], Mr.Rajan would submit that Ext.P2 is beyond the jurisdictional competence of the Secretary of the Panchayat. It is only the committee of the Panchayat which has got power to pass orders in the nature of Ext.P2. He would further submit that Ext.P2 order was passed without notice to the petitioner, who is the owner of the tree in question. The occupant of the property, Sri.Sunil Kumar, informed the Secretary that it is the petitioner who is having ownership, still the Panchayat was not inclined to issue notice to the petitioner. Counsel for the 4th respondent would submit that Section 238 certainly enables the Panchayat to

remove the over hanging branches of any tree. No prejudice is being occasioned to the petitioner since it is the over hanging branches alone which are going to be removed. Counsel for the Panchayat would support Ext.P2.

Considering the rival submissions addressed at the Bar, I am of the view that the question of cutting and removing the branches of the tree in question will have to be decided afresh. Ext.P4 is pending before the Panchayat. Ext.P4 will be treated as an appeal submitted by the petitioner before the Committee of the Panchayat. Ext.P4 will be taken up by the Committee of the Panchayat which will issue notice to the petitioner, 4th respondent and also to the additional 5th respondent and take a decision. It is open to the parties to raise all their grounds and contentions before the Panchayat Committee. The Panchayat Committee will take early decision on Ext.P4 and at any rate the decision will be taken by the Committee within one month of receiving copy of this judgment. The order of stay presently issued will continue till such time as a decision is taken on Ext.P4 pursuant to the above directions.

PIUS C. KURIAKOSE, JUDGE

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